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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

JOHN K. YEE AND IRENE S. YEE, H.N. AND FRANCES C. BERGER FOUNDATION, MOUNTAIN SHADOWS MOBILE HOME ESTATES, RICHARD C. KUEBLER, dba MOONGLOW MOBILE HOME PARK, CASA DE AMIGOS MOBILE HOME ESTATE, VISTA VERDE, LTD., IMPERIAL ESCONDIDO MOBILE ESTATES and MILDRED D. TACEY,

Petitioners,

vs.

THE CITY OF ESCONDIDO,

Respondent.

BRIEF FOR ACTION IN SANTA MONICA AS AMICUS CURIAE

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

This brief supports petitioners in seeking reversal of the decision of the Fourth Appellate District, Division One, Court of Appeal for California, which states a rent control law that in operation required petitioners to accept as tenants persons petitioners as owners of rental property had not chosen, constituted neither a taking without just compensation nor a denial of due process of law in violation of the Fifth Amendment to the United States Constitution. Consent to file was obtained from counsel for petitioners and respondent.

INTEREST OF ACTION IN SANTA MONICA

Amicus "ACTION in Santa Monica" is a group of over 700 apartment building owners in the City of Santa Monica, covered by a

rent control law ("the Rent Control Law")[1] similar to that covering petitioners, not allowing vacancy decontrol. That is, when a tenant moves, the owner must charge a new tenant the same rent charged the previous one, base rent plus adjustments the Rent Control Board has allowed since the Rent Control Law passed in 1979.

Amicus' interest in this case is in aiding the Court to make a clear decision exactly what constitutes a taking of appellants' property. This is not sale of mobile homes at a premium due to the right to park them on rent-controlled spaces, as the Hall case[2] originally seemed to state, but rather, as the Pinewood Estates[3] and

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1 City Charter Chapter 18, commonly called the Rent Control Charter Amendment, attached in the Appendix hereto as Exhibit A.

2 Hall v. City of Santa Barbara, 833 F.2d 1270 (9th Cir. 1987), cert. denied 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988).

3 Pinewood Estates of Michigan v. Barnegat Township, 898 F.2d 347 (3rd Cir. 1990).

Azul Pacifico[4] cases have more recently stated, passing a rent control law that, in combination with state law, gives tenants a right to stay indefinitely on the owners' property. The power to exclude, basic to private property, has been taken. Compensation for taking away of that power is what the Court should state is due.

The difference in how the Court finds the taking is important to amicus beyond its importance to the parties. Amicus members face a situation where state law and unclear provisions of the Rent Control Law added in 1989 have not yet been interpreted by the highest court of the state to require keeping new tenants chosen by old tenants. Lower courts have stated amicus have no right to evict tenants for

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4 Azul Pacifico, Inc. v. City of Los Angeles, ____ F.2d ____ (9th Cir., November 1, 1991, 91 Daily Journal D.A.R. 13599).

sub-leasing unless owners reserved the right in leases predating rent control. Even if owners could evict the tenants, an unauthorized sub-tenant seems to be given the right to stay as a tenant under the Rent Control Law, as simply being an unauthorized sub-tenant is not a "good cause" required for eviction.[5] Thus, if

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5 See Exhibit A in Appendix, section 1806, and Regulations of Santa Monica Rent Control Board, chapter 9, in Exhibit B in Appendix. See particularly Section 1806(g), which allows eviction of an unauthorized sub-tenant only "at the end of the term of [a] rental housing agreement." An informal survey indicates in approximately 80% of the cases, amicus members before rent control did not have rental housing agreements with termination dates. Under Section 1806(e), they cannot now require such terms. Also see particularly, Sections 2004, 9002(j) and 9007 of the Rent Control Board's Regulations in Exhibit B, added together in 1989 and apparently meant to keep amicus from being able to limit residents of apartments to the particular tenants amicus have chosen. In addition, the City of Santa Monica requires owners to accept as tenants spouses and children who come to live with a tenant after the beginning of a tenancy, so that it appears, in the event of divorce or death of the original tenant and a desire of the new tenant to stay in the apartment without the original tenant, the owner must accept the stranger as a tenant. These provisions have not been tested through the highest court in the state for their meaning and effect.

this Court states clearly in this case that the taking consists of taking away the power to exclude tenants, and the highest state court later states amicus cannot exclude unauthorized sub-tenants, a taking will then be established. On the other hand, if this Court requires a sale of a mobile home coach to establish the taking, this case will not apply to amicus.

More importantly to the Court and to the development of the takings law, if the Court finds the taking consists of what the owners have lost, not what the tenants have gained, amicus here submits the Court will rule correctly. The taking consists, not of what the state gives another person--in this case, the premium for a coach; but rather, of what the state takes from the owner--in this case, the right to exclude

unwanted tenants.[6]

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[6] Amicus does not here discuss whether rent control can without just compensation take away the right an owner had before rent control to exclude the very tenant the owner had chosen, due to changes in the behavior of the tenant, a need of the owner for the apartment, or other circumstances after the tenancy began. That question will have to remain for a case where the facts more closely present that issue. Here, where the question is whether compensation is due when the facts indicate transfers to strangers to the owners have occurred, amicus submits it is appropriate to frame the answer so that it consistently treats all owners, not just mobile home park owners, from whom the right to exclude strangers is taken by particular rent control laws.

Amicus also has no interest separate from that of the parties in the substantive due process claim, so amicus will not discuss that issue.

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SUMMARY OF ARGUMENT

I. A rent control law such as that involved in this case, operating to allow tenants unauthorized by the owner to stay indefinitely on the owner's property, consists of a taking for public use without just compensation because if the law is regulatory, allowing tenants to choose the next tenants does not substantially advance a legitimate state interest. If the legitimate reason for a rent control law is a shortage of rentals,[7] allowing tenants rather than owners to exploit the shortage accomplishes no purpose. The cost to new tenants is the same whether they pay a bonus to moving tenants for a space, or pay the owner. Transfering ownership rights in

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[7] A proposition amicus accepts only for purposes of argument.

property to tenants is thus confiscatory, for no legitimate state purpose.

II. If the rent control law allows permanent possessory rights to tenants, the law constitutes a taking without just compensation regardless of the state's interest, so discussion of any legitimate state interest is irrelevant.

ARGUMENT

I. The rent control law operating to authorize tenants unauthorized by the owner constitutes a taking because if it is regulatory, it substantially advances no legitimate state interest.

Land use regulations have been granted deference by this Court as long as they substantially advance a legitimate state interest. Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68 (1981). This deference comes under both a due process of law analysis or a takings analysis, since if the law involved is regulatory, the analysis under the two clauses is the same. The question is whether the law is authorized under the state's police power, that is, substantially advances a legitimate state interest.

In the case of a rent control law that allows moving tenants to choose the next

tenants, whether or not as was in evidence in the instant case, the moving tenants charge for the privilege, no legitimate state interest is advanced. The state may have an interest in allowing tenants to receive money because the state thinks tenants are poor or deserving or voters, but unless the state uses general funds to support that belief, that interest is not legitimate. "Robin Hood" ideas of redistribution of wealth are not countenanced by the Fifth Amendment, which requires that society in general, rather than a few citizens, pay for general problems. Pruneyard Shopping Center v. Robbins, 447 U.S. 74, 83 n. 7 (1980), citing United States v. Rands, 389 U.S. 121, 126 (1967). Thus, because the interest advanced by allowing tenants to choose the next tenants is not legitimate,

even if this law is regulatory, it violates the takings clause.

II. If the rent control law allows permanent possessory rights to tenants by allowing them to choose the next tenants, the law constitutes a taking without just compensation regardless of the state's interest. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). Thus, the three-part test in Hall v. City of Santa Barbara, 833 F.2d 1270, 1280 (9th Cir. 1987), cert. denied 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988), followed in Azul Pacifico v. City of Los Angeles, ___ F.2d ___ (9th Cir. November 1, 1991, 91 Daily Journal D.A.R. 13599, 13600), is incorrect in possessory rights cases in including the middle prong. For if the first prong is found in the affirmative, a

taking is established under Loretto, supra, regardless of the state interest.

Here, where tenants can stay in an owner's property whether or not the owner approves, for as long as the tenants wish, and can transfer that right without the owner's approval, there is without doubt possession. In these circumstances, the state cannot have an interest sufficient to remove the requirement that it pay compensation.

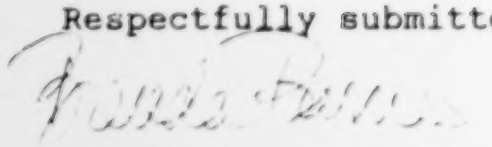
CONCLUSION

Requiring owners such as appellants to accept unauthorized tenants satisfies no legitimate state interest so is a taking if the law is seen as regulatory. Further, it takes the right to use, dispose of and sell property from the owners and gives it to the tenants, so is a taking regardless of the state's interest. The judgment of the Fourth Appellate District, Division One, of

the State of California should be reversed for either reason.

DATED: November 25, 1991

Respectfully submitted,



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APPENDIX A

SECTION 1800. **Statement of Purpose.** A growing shortage of housing units resulting in a low vacancy rate and rapidly rising rents exploiting this shortage constitute a serious housing problem affecting the lives of a substantial portion of those Santa Monica residents who reside in residential housing. In addition, speculation in the purchase and sale of existing residential housing units results in further rent increases. These conditions endanger the public health and welfare of Santa Monica tenants, especially the poor, minorities, students, young families, and senior citizens. The purpose of this Article, therefore, is to alleviate the hardship caused by this serious housing shortage by establishing a Rent Control Board empowered to regulate rentals in the City of Santa Monica so that rents will not be increased unreasonably and so that landlords will receive no more than a fair return.

In order to accomplish this purpose, this Article provides for an elected Rent Control Board to ensure that rents are at a fair level by requiring landlords to justify any rents in excess of the rents in effect one year prior to the adoption of this Article. Tenants may seek rent reductions from the rent in effect one year prior to the adoption of this Article by establishing that those rents are excessive. In addition to giving tenants an opportunity to contest any rent increase, this Article attempts to provide reasonable protection to tenants by controlling removal of controlled rental units from the housing market and by requiring just cause for any eviction from a controlled rental unit.

Through this Article, the City exercises its police power in order to address the serious housing problem recognized in the original enactment of this Rent Control Law in 1979 and still existing in 1984. The 1984 Amendment to the Rent Control Law is intended to clarify the law and ensure that the Rent Control Board possesses adequate and independent authority to carry out its duties. It is intended to ensure due process of law for landlords and tenants, effective remedies for violation of the law, and consistency with constitutional requirements. It is also intended to enable the Board to provide relief to persons facing particular hardship and to protect and increase the supply of affordable housing in the City. Termination or erosion of the protections of this Article would have serious disruptive consequences for persons in need of protection and the supply of affordable housing in the City.

SECTION 1801. **Definitions.** The following words or phrases as used in this Article shall have the following meanings:

(a) **Board.** The term "Board" refers to the elected Rent Control Board established by this Article.

(b) **Commissioners.** The members of the Board and Interim Board are denominated Commissioners.

(c) **Controlled Rental Units.** All residential rental units in the City of Santa Monica, including mobile homes, and mobile home spaces, and trailers and trailer spaces, except single family homes to the extent provided for in Section 1815 and those units found by the

Board to be exempt under one or more of the following provisions:

(1) Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days.

(2) Rental units in any hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged, or dormitory owned and operated by an institution of higher education.

(3) Rental units which a government unit, agency or authority owns, operates, manages, or in which governmentally subsidized tenants reside only if applicable Federal or State law or administrative regulation specially exempt such units from municipal rent control.

(4) Rental units in owner-occupied dwellings with no more than three (3) units. For purposes of this section:

(i) The term "owner" means a natural person who owns a fifty (50) percent ownership interest in the building and resides on the property as his or her principal place of residence.

(ii) An exemption under this Section shall expire by operation of law when the owner ceases to reside on the property as his or her principal place of residence; thereafter, all units on the property shall be subject to all provisions of this Article.

(5) Rental units and dwellings constructed after the adoption of this Article; this exemption does not apply to units created as a result of conversion as opposed to new construction.

(6) Where a unit is actually used for purposes of providing, on a nonprofit basis, child care or other residential social services in accordance with applicable laws. This exemption shall expire when the use upon which exemption is based ceases. This exemption shall only apply to units as they become vacant and shall only operate to allow the specified use without the necessity of obtaining a removal permit under this Article. This exemption shall not be construed to authorize the eviction of any tenant nor to authorize the charging of rent in excess of that permitted under this Article. The Board may adopt regulations to determine whether a unit qualifies for an exemption under this Section.

(7) Exemptions are not automatic but shall be granted by the Board upon application by the owner pursuant to Board rules, provided that if the Board does not act upon a completed application for exemption within ninety (90) days of its filing it shall be deemed approved.

(d) **Housing Service.** Housing services include, but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, telephone, parking, and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

(e) **Landlord.** An owner, lessor, sublessor or any other person entitled to receive rent for the use and occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

(f) **Rent.** All periodic payments and all nonmonetary consideration including but not limited to, the fair market value of goods or services rendered to or for the benefit of the landlord under an agreement concerning the use or occupancy of a rental unit and premises including all payment and consideration demanded or paid for parking, pets, furniture, subletting and security deposits for damages and cleaning.

(g) **Rental Housing Agreement.** An agreement, oral, written or implied, between a landlord and tenant for use or occupancy of a rental unit and for housing services.

(h) **Rental Units.** Any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for living or dwelling house units, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

(i) **Tenant.** A tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a rental housing agreement to the use or occupancy of any rental unit.

(j) **Recognized Tenant Organization.** Any group of tenants residing in controlled rental units in the same building or in different buildings

operated by the same management company, agent or landlord, who requests to be so designated.

(k) **Rent Ceiling.** Rent ceiling refers to the limit on the maximum allowable rent which a landlord may charge on any controlled rental unit.

(l) **Base Rent Ceiling.** The maximum allowable rent established in Section 1804(b).

(m) **Property.** All rental units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

(n) **Single Family Home.** A property that has been developed with only one one-family dwelling and any lawful accessory structures, or a lawfully created condominium, stock co-operative or similar unit that is part of a larger residential structure or complex, excepting those condominiums, stock cooperatives, or similar units converted after April 10, 1979 for which no removal permit or vested right determination has been issued by the Board, and those created pursuant to Article XX of this Charter.

SECTION 1802. **Integrity and Autonomy of Board.** The Rent Control Board shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent of and without interference from the City Council, City Manager, and City Attorney. With respect to the internal organization and affairs of the Board:

(a) **Budget.** The Board shall, prior to July 1 of each year, hold a public hearing on a proposed budget and adopt an annual budget for the ensuing fiscal year. At least thirty-five (35) days prior to the beginning of each fiscal year, the Board's administrator shall submit to the Board the proposed budget as prepared by him or her. After reviewing the same and making such revisions as it may deem advisable, the Board shall determine the time for the holding of a public hearing thereon and shall cause to be published a notice thereof not less than ten (10) days prior to said hearing, by at least one insertion in the official newspaper. Copies of the proposed budget shall be available for inspection by the public in the office of the Board at least ten (10) days prior to said hearing. The City Council and the City Manager shall have no authority to oversee, supervise, or approve this budget. Upon final adoption, the budget shall be in effect for the ensuing fiscal year and the amounts stated therein shall be and become appropriated by the Board for the respective objects and purposes therein specified. At any meeting after the adoption of the budget, the Board may amend or supplement the budget by the affirmative votes of at least three (3) members. Copies of the adopted budget and any amendments or supplements shall be filed with the City Clerk, City Controller, and City Manager. Necessary adjustments to City administrative procedures shall be made.

(b) **Personnel.** Except for the elected or appointed Commissioners, the Administrator, and attorneys employed to represent or advise

the Board, all employees of the Board are within the classified Civil Service of the City. The Board shall appoint an Administrator to administer and supervise the exercise of its powers and duties who shall be directly responsible to the Board. All employees of the Board, except the Administrator and attorneys, shall be hired, terminated, suspended, and demoted in accordance with the provisions of Article XI of the Charter and implementing provisions of the Municipal Code. The Board shall classify employee positions, establish employee salaries and benefits, evaluate the performance of its employees, and be responsible for the layoff and recall of its employees, pursuant to regulations and procedures that it establishes. The Board may enter into and approve a Memorandum of Understanding with representatives of its employees concerning their wages, benefits, hours of work, and terms and conditions of employment in accordance with State law. The City Council shall have no power to abolish positions established or classified by the Board under this Article, notwithstanding any other section of this Charter. Provisions of the Municipal Code and other ordinances or resolutions of the City Council shall not limit the Board's power to adopt regulations and policies and to approve Memorandums of Understanding governing its relationship with its employees under this Section.

(c) **Board Legal Work.** Legal staff hired by the Board shall represent and advise the Board,

its Commissioners, and its staff in any civil matters, actions, or proceedings in which the Board, its Commissioners, or its staff, in or by reason of their official capacity, are concerned or are a party. The Board may, in its sole discretion, and without approval of the City Council, retain private attorneys to furnish legal advice or representation in particular matters, actions or proceedings.

(d) **Contracts and Purchases.** The Board shall comply with the provisions of the City Charter providing for a centralized purchasing system and competitive bidding, and shall procure goods and services as do other City agencies. Provided, however, that the Board shall have sole and final authority to employ attorneys, legislative lobbyists, and other professionals, and to approve contracts for such professional services.

(e) **Conforming Regulations.** If any portion of this Article is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by State or Federal legislation, the Board and not the City Council shall have authority to enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law. Such replacement regulations shall supersede invalidated or unenforceable provisions of this Article to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to rent control matters as enumerated in this Article.

SECTION 1803. **Permanent Rent Control Board.**

(a) **Composition.** There shall be in the City of Santa Monica a Rent Control Board. The Board shall consist of five (5) elected Commissioners. The Board shall elect annually as chairperson, one of its members to serve in that capacity.

(b) **Eligibility.** Duly qualified electors of the City of Santa Monica are eligible to serve as Commissioners of the Board.

(c) **Full Disclosure of Holdings.** Candidates for the position of Commissioner shall submit a verified statement listing all of their interests and dealings in real property, including but not limited to its ownership, sale or management, during the previous three (3) years.

(d) **Election of Commissioners.** Commissioners shall be elected at general municipal elections in the same manner as set forth in Article XIV of the Santa Monica Charter, except that the first Commissioners shall be elected at a special municipal election held within ninety (90) days of the adoption of this Article. The elected Commissioners shall take office on the first Tuesday following their election.

(e) **Term of Office.** Commissioners shall be elected to serve terms of four (4) years, beginning on the first Tuesday following their election, except that of the first five (5) Commissioners elected in accordance with Section 1803(d), the two (2) Commissioners receiving the most votes shall serve until April 15, 1985

and the remaining three (3) Commissioners shall serve until April 18, 1983. Commissioners shall serve a maximum of two (2) full terms.

(f) **Powers and Duties.** The Board shall have the following powers and duties:

(1) Set the rent ceilings for all controlled rental units.

(2) Require registration of all controlled rental units under Section 1803(q).

(3) Establish a base rent ceiling on rents under Section 1804(b).

(4) To make adjustments in the rent ceiling in accordance with Section 1805.

(5) Set rents at fair and equitable levels in order to achieve the intent of this Article.

(6) Hire and pay necessary staff, including hearing examiners and personnel to issue orders, rules and regulations, conduct hearings and charge fees as set forth below.

(7) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

(8) Report annually to the City Council of the City of Santa Monica on the status of controlled rental housing.

(9) Remove rent controls under Section 1803(r).

(10) Issue permits for removal of controlled rental units from rental housing market under Section 1803(t).

(11) Administer oaths and affirmations and subpoena witnesses.

(12) Establish rules and regulations for deducting penalties and settling civil claims under Section 1809.

(13) Refer violations of this Article to appropriate authorities for criminal prosecution.

(14) Seek injunctive and other civil relief under Section 1811.

(15) Charge and collect registration fees including penalties for late payments.

(g) **Rules and Regulations.** The Board shall issue and follow such rules and regulations, including those which are contained in this Article, as will further the purposes of this Article. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of Santa Monica. The Board shall hold at least one public hearing to consider the views of interested parties prior to the adoption of general adjustments of the decision to decontrol or reimpose control for any class of rental units under Section 1803(r). All rules and regulations, internal staff memoranda, and written correspondence explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying. The Board shall publicize this Article so that all residents of Santa Monica will have the opportunity to become informed about their legal rights and duties under Rent Control in Santa Monica. The Board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under Rent Control in Santa Monica.

The brochure will be available to the public, and each tenant of a controlled rental unit shall receive a copy of the brochure from his or her landlord.

(h) **Meetings.** The Board shall hold such regularly scheduled meetings as are necessary to ensure the timely performance of its duties under this Article. All regular and special meetings shall be called and conducted in accordance with State law.

(i) **Quorum.** Three (3) Commissioners shall constitute a quorum for the Board.

(j) **Voting.** The affirmative vote of three (3) Commissioners of the Board is required for a decision, including all motions, regulations, and orders of the Board.

(k) **Compensation.** Each Commissioner shall receive for every meeting attended seventy-five dollars ($75.00), but in no event shall any Commissioner receive in any twelve (12) month period more than forty-seven hundred and fifty dollars ($4,750) for services rendered.

(l) **Dockets.** The Board shall maintain and keep in its office all hearing dockets.

(m) **Vacancies.** If a vacancy shall occur on the Board, the Board shall within thirty (30) days appoint a qualified person to fill such a vacancy until the following municipal election when a qualified person shall be elected to serve for the remainder of the term.

(n) **Financing.** The Board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts

deemed reasonable by the Board. The Board may direct that all or part of such fees may be passed through from landlords to tenants and may establish applicable conditions and procedures. The Board is also empowered to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses.

(o) **Recall.** Commissioners may be recalled in accordance with the provisions of Article XIV of the Santa Monica Charter.

(p) **Staff.** The Board shall employ and pay such staff, including hearing examiners and inspectors, as may be necessary to perform its function efficiently in order to fulfill the purpose of this Article.

(q) **Registration.** Within sixty (60) days after the adoption of this Article, the Board shall require the registration of all controlled rental units, which shall be re-registered at times deemed appropriate by the Board. The initial registration shall include the rent in effect at the time on the date of the adoption of this Article, base rent ceiling, the address of the rental unit, the name and address of the landlord, the housing services provided to the unit, a statement indicating all operating cost increases since the base rent ceiling date, and any other information deemed relevant by the Board. The Board shall require the landlord to report vacancies in the controlled rental units and shall make a list of vacant controlled rental units available to the public. If the Board, after the landlord has proper notice and after a

hearing, determines that a landlord has wilfully and knowingly failed to register a controlled rental unit, the Board may authorized the tenant of such a non-registered controlled rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is properly registered. After a rental unit is properly registered, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not properly registered. Whether or not the Board allows such withholding, no landlord who has failed to register properly shall at any time increase rents for a controlled rental unit until such units are properly registered.

(r) **Decontrol.** If the average annual vacancy rate in any category, classification, or area of controlled rental units exceeds 5 percent, the Board is empowered, at its discretion and in order to achieve the objectives of this Article, to remove rent controls from such category, classification or area. The Board may determine such categories, classifications, or areas for purposes of decontrol consistent with the objectives of this Article. In determining the vacancy rate for any category, classification or area of controlled rental units, the Board shall consider all available data and shall conduct its own survey. If units are decontrolled pursuant to this Subsection, controls shall be reimposed if the Board finds that the average annual vacancy rate has thereafter fallen below 5 percent for such category, classification or area.

(s) **Security Deposits.** Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be placed in an interest bearing account at a federally insured financial institution until such time as it is returned to the tenant or entitled to be used by the landlord. Unless and until the Board enacts regulations directing that the interest on such accounts be paid directly to the tenant, the landlord may either pay such interest directly to the tenant or use it to offset operating expenses, in which case the offset shall be a factor in making individual rent adjustments under Section 1805. The Board may regulate the amount and use of security deposits consistent with the purposes of this Article and State law.

(t) **Removal of Controlled Unit From Rental Housing Market.**

(1) Any landlord who desires to remove a controlled rental unit from the rental housing market by demolition, conversion or other means is required to obtain a permit from the Board prior to such removal from the rental housing market in accordance with rules and regulations promulgated by the Board. In order to approve such a permit, the Board is required to find that the landlord cannot make a fair return by retaining the controlled rental unit.

(2) Notwithstanding the foregoing provisions of this Subsection, the Board may approve such a permit:

(i) If the Board finds that the controlled rental unit is uninhabitable and is incapable of being made habitable in an economically feasible manner; or

(ii) If the permit is being sought so that the property may be developed with multifamily dwelling units and the permit applicant agrees as a condition of approval, that the units will not be exempt from the provisions of this Article pursuant to Section 1801(c) and that at least 15 percent of the controlled rental units to be built on the site will be at rents affordable by persons of low income.

(3) The Housing Element of the General Plan of the City of Santa Monica shall at all times contain a provision that neither the City Council nor any City agency shall approve an application for tentative subdivision map or tentative parcel map for a converted unit until and unless the applicant first obtains a removal permit as required by this Section. This Subsection shall not apply to any tentative subdivision map or tentative parcel map approved in accordance with Article XX relating to tenant ownership rights.

(4) The Board shall render its final decision within one hundred and twenty (120) days of the filing of a completed application under this Section.

SECTION 1804. **Maximum Allowable Rents.**

(a) **Temporary Freeze.** Rents shall not be increased during the one hundred-twenty

(120) day period following the date of adoption of this Article.

(b) **Establishment of Base Rent Ceiling.** Beginning one-hundred-twenty (120) days after the adoption of this Article, no landlord shall charge rent for any controlled rental units in an amount greater than the rent in effect on the date one year prior to the adoption of this Article. The rent in effect on that date is the base rent ceiling and is a reference point from which fair rents shall be adjusted upward or downward in accordance with Section 1805. If there was no rent in effect on the date one year prior to the adoption of this Article, the base rent ceiling shall be the rent that was charged on the first date that rent was charged following the date one year prior to the adoption of this Article.

(c) **Posting.** As soon as the landlord is aware of the maximum allowable rent, the landlord shall post it for each unit in a prominent place in or about the affected controlled rent units. The Board may require that other information it deems relevant also be posted.

SECTION 1805. **Individual and General Adjustment of Ceilings on Allowable Rents.**

(a) **General Adjustment.** The Board may, after holding those public hearings prescribed by Section 1803(g), set and adjust upward or downward the rent ceiling for all controlled rental units in general and/or for particular categories of controlled rental units deemed appropriate by the Board. Such an adjustment,

however, need not take effect immediately, and the Board may decide that new rent ceilings shall not take effect until some reasonable date after the above-stated time periods.

(b) **Annual General Adjustment.** Each year the Board shall generally adjust rents as follows:

(1) Adjust rents upward by granting landlords a utility and tax increase adjustment for actual increases in the City of Santa Monica for taxes and utilities.

(2) Adjust rents upward by granting landlords a maintenance increase adjustment for actual increases in the City of Santa Monica for maintenance expenses.

(3) Adjust rents downward by requiring landlords to decrease rents for any actual decreases in the City of Santa Monica for taxes.

In adjusting rents under this Subsection, the Board shall adopt a formula of general application.

(c) **Petitions.** Upon receipt of a petition by a landlord and/or a tenant, the maximum rent of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board and shall include a declaration by the landlord that the unit meets all requirements of Section 1805(h). Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant a rent adjustment if an individual hearing has been held and

decision made with regard to maximum rent within the previous six (6) months.

(d) **Hearing Procedure.** The Board shall enact rules and regulations governing hearings and appeals of individual adjustment of ceilings on allowable rents which shall include the following:

(1) **Hearing Examiner.** A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustment of ceilings on allowable rents and shall have the power to administer oaths and affirmations.

(2) **Notice.** The Board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.

(3) **Time of Hearing.** The hearing officer shall notify all parties, as to the time, date and place of the hearing.

(4) **Records.** The hearing examiner may require either party to a rent adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the City to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the

hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing at the office of the Board. In cases where information filed in a petition for rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

(5) **Open Hearings.** All rent ceiling adjustment hearings shall be open to the public.

(6) **Right of Assistance.** All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, recognized tenant organization representatives or any other persons designated by said parties.

(7) **Hearing Record.** The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part on one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions; orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the

proceeding tape recorded or otherwise transcribed at his or own expense.

(8) **Quantum of Proof and Notice of Decision.** No individual adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of face and law upon which said decision is based. At the same time, parties to the proceeding shall also be notified of their right to any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 1808 of this Article.

(9) **Consolidation.** All landlord petitions pertaining to tenants in the same building will be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

(10) **Appeal.** Any person agrieved by the decision of the hearing examiner may appeal to the Board. On appeal, the Board shall affirm, reverse or modify the decision of the hearing examiner. The Board may conduct a de novo hearing or may act on the basis of the record before the hearing examiner without holding a hearing.

(11) **Finality of Decision.** The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in

the event that the Board on appeal reverses or modifies the decision of the hearing examiner, the landlord, in the case of an upward adjustment in rent, or the tenant, in the case of a downward adjustment of rent, shall be ordered to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the Board.

(12) **Time for Decision.** The rules and regulations adopted by the Board shall provide for final action on any individual rent adjustment petition within one hundred and twenty (120) days, following the date of filing of the individual rent adjustment petition.

(13) **Board Action in Lieu of Reference to Hearing Examiner.** The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for rent adjustment without the petition first being heard by a hearing examiner.

(14) Decisions decreasing rents shall remain in effect until the Board finds that the landlord has corrected the defect warranting the decrease. The Board shall, by regulation, establish procedures for making prompt compliance determinations. Upon a determination of compliance the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the landlord corrected the defect which warranted the decrease.

(e) In making individual and general adjustment of the rent ceiling, the Board shall

consider the purposes of this Article and the requirements of law. The Board may adopt as its fair return standard any lawful formula, including but not limited to one based on investment or net operating income. The Board shall consider all factors relevant to the formula it employs; such factors may include: increases or decreases in operating and maintenance expenses, the extent of utilities paid by the landlord, necessary and reasonable capital improvement of the controlled rental unit as distinguished from normal repair, replacement and maintenance, increases or decreases in living space, furniture, furnishings, equipment, or services, substantial deterioration of the controlled rental unit other than as a result of ordinary wear and tear, failure on the part of the landlord to provide adequate housing services or to comply substantially with applicable housing, health and safety codes, Federal and State income tax benefits, the speculative nature of the investment, whether or not the property was acquired or is held as a long term or short term investment, the landlord's rate of return on investment, the landlord's current and base date Net Operating Income, and any other factor deemed relevant by the Board in providing the landlord a fair return.

(f) No rent increase shall be authorized by this Article because a landlord has a negative cash flow as the result of refinancing the controlled rental unit if at the time the landlord refinanced the landlord could reasonably have foreseen a negative cash flow based on the rent

schedule then in existence within the one year period following refinancing. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following refinancing of the controlled rental unit and shall only apply to controlled rental units refinanced after the date of adoption of this Article.

(g) No rent increase shall be authorized by this Article because a landlord has a negative cash flow if at the time the landlord acquired the controlled rental unit, the landlord could reasonably have foreseen a negative cash flow based on the rent schedule then in existence within the one year period following acquisition. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following acquisition of a controlled rental unit and shall only apply to controlled rental units acquired after the date of adoption of this Article.

(h) No landlord shall increase rent under this Article if the landlord:

(1) Has failed to comply with any provision of this Article and/or regulations issued thereunder by the Board, including the provisions requiring the payment of registration fees and registration penalties.

(2) Has failed to comply substantially with any applicable State or local housing, health or safety law. No landlord shall increase rent unless the notice increasing rent contains a statement in substantially the following form: "The undersigned (landlord) certifies that this

unit and common areas are not subject to any uncorrected citation or notices of violation of any State or local housing health, or safety laws issued by any goverment official or agency." If a landlord fails to comply with this Subsection, the tenant may refuse to pay the improperly noticed increase, may seek administrative or civil remedies under this Article, and may raise the landlord's noncompliance as an affirmative defense in any resulting unlawful detainer action.

(i) The Board may, in its discretion, enact regulations to provide for increases of rents on units voluntarily vacated after the effective date of this Subsection in properties where the landlord has dedicated a percentage of units to be rented to persons of very low or low income at affordable rents. The Board may enact procedures and other regulations governing determination of the conditions upon which such increases will be permitted, the extent of the increases, the required mix of affordable units to be provided, ways to ensure the continued provision of affordable housing under this Subsection, the terms and conditions applicable when landlords cease to participate or when tenants vacate or cease to qualify for units dedicated to affordable housing, and other measures it deems necessary.

If the Board enacts regulations under this Subsection, its shall provide for the following:

(1) That a property shall not be eligible for this program unless a specified percentage of all units on the property, no less than 15 percent, will be occupied by tenants of very low or low

income and the rent on each unit so occupied does not exceed a specified percentage, no greater than 30 percent, of such tenants' income.

(2) That tenants of very low or low income occupying units maintained at affordable rent levels under this program are protected if the landlord elects not to participate further in the program. Such protection shall include, at a minimum, a provision prohibiting the rent of such tenants from being increased by a percentage greater than the general annual adjustment allowed by the Board even if the resulting rent is below the maximum allowable rent and the landlord has lowered the rent for other units on the property.

SECTION 1806. **Eviction.** No landlord shall take action to terminate any tenancy including service of any notice to quit or other eviction notice or bring any action to recover possession or be granted recovery of possession of a controlled rental unit unless:

(a) The tenant has failed to pay the rent to which the landlord is entitled under the rental housing agreement and this Article.

(b) The tenant has violated an obligation or covenant of his or her tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord in the manner required by law.

(c) The tenant is committing or expressly permitting a nuisance in, or is causing substantial damage to, the controlled rental unit, or is creating a substantial interference with the

comfort, safety, or enjoyment of the landlord or other occupants or neighbors of the same.

(d) The tenant is convicted of using or expressly permitting a controlled rental unit to be used for any illegal purpose.

(e) The tenant, who had a rental housing agreement which had terminated, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms as are not inconsistent with or violative of any provisions of this Article and are materially the same as in the previous agreement.

(f) The tenant has refused the landlord reasonable access to the controlled rental unit for the purposes of making necessary repairs or improvements required by the laws of the United States, the State of California or any subdivision thereof, or for the purpose of showing the rental housing to any prospective purchaser or mortgagee.

(g) The tenant holding at the end of the term of the rental housing agreement is a sub-tenant not approved by the landlord.

(h) The landlord seeks to recover possession in good faith for use and occupancy by herself or himself, or her or his children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. For purposes of evictions under this Subsection:

(1) A "landlord" shall be defined as a natural person who has at least a fifty (50) percent ownership interest in the property.

(2) No eviction may take place if any landlord or enumerated relative already occupies one unit on the property, or if a vacancy already exists on the property and the vacant unit is comparable to the unit for which eviction is sought. Where the vacant unit is determined not to be comparable, thereby permitting eviction under this Subsection, the evicted tenant or tenants shall be first given the right to occupy the vacant unit and the rent thereof shall be the lesser of the maximum allowable rent for the vacant unit and the maximum allowable rent of the unit from which the tenant or tenants are evicted. The Rent Control Board shall promulgate regulations defining when a unit is comparable for purposes of this paragraph.

(3) The notice terminating tenancy shall contain the name, address and relationship to the landlord of the person intended to occupy.

(4) The landlord or enumerated relative must intend in good faith to move into the unit within thirty (30) days after the tenant vacates and to occupy the unit as a primary residence for at least one year. The Board may adopt regulations governing the determination of good faith.

(5) If the landlord or relative specified on the notice terminating tenancy fails to occupy the unit within thirty (30) days after the tenant vacates, the landlord shall:

(i) Offer the unit to the tenant who vacated it.

(ii) Pay to said tenant all reasonable expenses incurred in moving to and/or from the unit.

(6) No eviction pursuant to this Subsection shall be allowed in any condominium or stock cooperative unit which has been converted from an apartment or other rental unit after April 10, 1979, unless the Rent Control Board has issued a removal permit or declared a vested right for said unit. As used in this subpart, a unit shall be deemed converted after April 10, 1979, if on April 10, 1979 the recorded tract map or parcel map for the property showed the unit as included in the property.

(i) The landlord seeks to recover possession to demolish or otherwise remove the controlled rental unit from rental residential housing use after having obtained all proper permits from the City of Santa Monica.

Notwithstanding the above provisions, possession shall not be granted if it is determined that the eviction is in retaliation for the tenant reporting violations of this Article, for exercising rights granted under this Article, including the right to withhold rent upon authorization of the Board under Section 1803(q) or Section 1809 or for organization other tenants. In any notice purporting to terminate tenancy the landlord shall state the cause for the termination, and in any action brought to recover possession of a controlled rental unit, the landlord shall allege and prove compliance with this Section.

Any violation of this Section shall render the landlord liable to the tenant in a civil action for

actual and punitive damages. The prevailing party in an action based upon this Section shall recover costs and attorneys fees.

SECTION 1807. **Non-Waiverability.** Any provision, whether oral or written, in or pertaining to a rental housing agreement whereby any provision of this Article for the benefit of the tenant is waived, shall be deemed to be against public policy and shall be void.

SECTION 1808. **Judicial Review.** A landlord or tenant aggrieved by any action or decision of the Board may seek judicial review by appealing to the appropriate court within the jurisdiction.

SECTION 1809. **Civil Remedies.**

(a) Any landlord who demands, accepts, receives, or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this Article or any rule, regulation or order hereunder promulgated, including the provisions ensuring compliance with habitability standards and registration fee requirements, shall be liable in a civil action to the tenant from whom such payments are demanded, accepted, received or retained, for reasonable attorney's fees and costs as determined by the court, plus damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful rent. A civil penalty of treble the amount by which the payment or

payments demanded, accepted, received or retained exceeds the maximum lawful rent shall be awarded against the landlord upon a showing that the landlord has acted willfully or with oppression, fraud or malice. No administrative remedy need be exhausted prior to filing suit pursuant to this Subsection.

(b) In lieu of filing a civil action, a tenant may file an administrative complaint. The Board shall establish by rule and regulation a hearing procedure similar to that set forth in Section 1805(d).

(1) The rules and regulations adopted by the Board shall provide for final Board action on any complaint for excess rent within one hundred and twenty (120) days following the date of filing of the complaint.

(2) In any administrative hearing under this Section, a landlord who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent shall be liable for damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful rent and may be liable for an additional amount not to exceed five hundred dollars ($500.00), for costs, expenses incurred in pursuing the hearing remedy, damages and penalties. The tenant shall bear the burden of proving entitlement to the penalty. The tenant may deduct the penalty and award of damages from future rent payments in the manner provided by the Board. An order authorizing rent withholding under this Article shall survive

the sale or other transfer of the property and shall be binding upon successors of the landlord against whom the order was made. If a tenant authorized to withhold rent under this Article vacates the property, the landlord shall pay to such tenant a sum equal to the balance of the rent that the tenant could have withheld.

(c) If the tenant from whom such excessive payment is demanded, accepted, received or retained in violation of the foregoing provisions of this Article or any rule or regulation or order hereunder promulgated fails to bring a civil or administrative action as provided for in Section 1809 (a) and 1809 (b) within one hundred and twenty (120) days from the date of occurrence of the violation, the Board may settle the claim arising out of the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted is barred from also bringing an action against the landlord in regard to the same violation for which the Board has made a settlement or brought action. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof, and the tenant against whom the violation has been committed shall be entitled to the remainder.

(d) The appropriate court in the jurisdiction in which the controlled rental unit affected is located shall have jurisdiction over all actions brought under this Section.

SECTION 1810. **Criminal Remedies.** Any landlord violating this Article shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this Article shall be punished by a fines of not more than five hundred ($500.00) dollars or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

SECTION 1811. **Injunctive and Other Civil Relief.** The Board, and tenants and landlords of controlled units, may seek relief from the appropriate court within the jurisdiction within which the affected controlled rental unit is located to enforce any provision of this Article or its implementing regulations or to restrain or enjoin any violation of this Article and of the rules, regulations, orders and decisions of the Board.

SECTION 1812. **Partial Invalidity.** If any provision of this Article or application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. This Article shall be liberally construed to achieve the purposes of this Article and to preserve its validity.

SECTION 1813. **Relationship to Article XX.** Section 1803(t) of this Article shall not apply to any building for which approval has been received pursuant to Article XX (Tenant Ownership Rights Charter Amendments) of this Charter. All other provisions of this Article, however, shall continue to apply with full force and effect to each unit in any building receiving approval pursuant to Article XX.

Tenants residing in such units, whether or not "qualifying," "participating," or any other such designation under Article XX, shall enjoy all the rights and remedies provided by this Article without limitation as to duration or to ownership of the unit. This Section is declarative of existing law and does not impose any new requirements or limit any existing ones.

SECTION 1814. **Existing Board Practices.** To the extent that the amendments to Article XVIII adopted at the same time as this Section incorporate rules, regulations and practices of the Rent Control Board existing on the date of the adoption hereof, this amendment is declarative of existing law and does not impose any new requirements or limit any existing ones.

SECTION 1815. **Single Family Homes.** Single family homes that were not used for residential rental purposes on July 1, 1984 are automatically exempt from the provisions of this Article. Single family homes that are not exempt under the preceding sentence are subject to all requirements of this Article, but shall be permanently exempted by the Board upon proof that the home has been continuously

occupied by the owner for a period of two (2) years as a principle place of residence after voluntary vacancy by the tenant or lawful eviction of the tenant. An owner may have only one exemption under this Section at any one time.

SECTION 1820. **State Owned Property.** This Article shall not apply to any property which is part of the State Park System or sovereign tidelands and owned by the State of California on July 1, 1990.

APPENDIX B

CHAPTER 2

DEFINITIONS

2000. The following words or phrases, as used in the Rent Control Charter Amendment or these Regulations shall have the following meanings:

2001. Owner-Occupied Dwellings

For the purposes of determining exemptions for owner-occupancy under §1801(c)(4) of the Rent Control Charter Amendment:

(a) An owner-occupant must occupy the housing unit in good faith, as the principal place of residence.

(b) No corporation, trust, partnership, or association can be considered an owner-occupant.

(c) A person may be considered an owner-occupant only if said person owns at least a 50% interest in the property.

(d) The dwelling must contain no more than three units on one legal parcel, including units contained in separate buildings on the same parcel.

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2004. Privileges as Housing Services and Material Terms

As defined in subsection 1801(d) of the Rent Control Law, the etrm "housing service" includes "any . . . privilege . . . connected with the use or occupancy of any rental unit." Such privileges include, but are not limited to, the following:

a. The right to have roommates;

b. The right to have overnight guests;

c. The right to have pets.

Reduction of such services may be grounds for a rent decrease pursuant to subsection 1805(e) of the Rent Control Law and Chapter 4 of these Regulations. In addition, such housing services shall be considered material terms of any rental housing agreement for the purposes of subsection 1806(e) of the Rent Control Law.

[2004 Adopted 6/1/89; Effective 6/10/89]

[Chapter 2 Adopted 11/29/79; Effective 12/4/79]

CHAPTER 9.

EVICTIONS

9000. Scope of Regulations.

These regulations are designed to implement and clarify the just cause eviction requirements of §1806 of the Santa Monica City Charter. The authority for promulgation of these regulations derives from §1803(g) of the Santa Monica City Charter.

. . . . .

[9002] (j). A landlord shall not attempt to recover possession of a unit pursuant to Section 1806(h) where there is a comparable unit occupied by a tenant who moved onto the property where the unit is located more recently than the tenant from whom the landlord seeks to recover possession. For purposes of this provision, "comparable unit" shall mean a unit of the same number of bedrooms, with substantially the same amenities and housing services, and with square footage that varies no more than fifteen percent (15%) from the unit for which the landlord is attempting to recover possession.

[9002(j) Adopted 6/1/89; Effective 6/10/89]

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9007. No tenancy may be terminated for violation of a covenant of a rental agreement, other than the covenant to pay the lawful rent, unless that covenant was the result of an express agreement between the landlord and tenant. An express agreement must be in writing, signed by both parties and the tenant must have knowingly consented to the change. A landlord may not unilaterally change the terms of tenancy under Civil Code §827 and then evict the tenant for violation of the added covenant unless the tenant has agreed in writing to the additional covenant.

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[Chapter 9 Amended 4/13/89; Effective 4/23/89]